No. 25-316

IN THE

Supreme Court of the United States

Kerlee Jilla,

Petitioner,

v.

Luzabelle Lucas-Jilla,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

PETITION FOR REHEARING

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Questions Presented for Review

1. **Whether, in light of 2025 federal judicial developments emphasizing transcript integrity and reliable appellate records, the State's failure to provide a record of sufficient completeness or an adequate equivalent violates the Fourteenth Amendment's guarantees of due process and equal protection under this Court's decisions in *Griffin v. Illinois; Draper v. Washington; Mayer v. City of Chicago; and Hardy v. United States.***
2. **Whether proposed rules, Judicial Conference activities, and procedural amendments while not controlling law under the Rules Enabling Act, 28 U.S.C. § 2072 and § 2074—nonetheless provide persuasive, nationally relevant context supporting rehearing under Rule 44.2, consistent with this Court's treatment of nonbinding guidance as persuasive rather than controlling, e.g., *Christensen v. Harris County; Skidmore v. Swift & Co.; Azar v. Allina Health Services; see also Sweet v. Sheahan; Eustace v. Commissioner.***

Related Proceedings

Florida Supreme Court, Case No. SC2025-1234
Third District Court of Appeal, Case No. 3D23-5678
Lower Tribunal Case No. 2022-CA-999

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PETITION FOR REHEARING

RULE 44.2 STATEMENT OF GROUND

Petitioner respectfully seeks rehearing of the Court's 11/24/2025 order because intervening 2025 developments within the federal judiciary, together with newly presented federal grounds not previously advanced, materially alter the constitutional significance of the question presented and satisfy **Rule 44.2**. Petitioner does not contend that any proposed rule or administrative action is binding law; rather, they provide persuasive context and urgency that sharpens the federal question under existing precedent.

This petition is timely under the 25-day period prescribed by **Sup. Ct. R. 44.2** and does not seek to delay finality; denial of certiorari remains effective absent an order to the contrary under **Sup. Ct. R. 16.3**; see also the finality principles articulated in *Clay v. Unit -ed States; United States v. Thomas; Robinson v. Un-ited States*. The petition rests on two independent R-ule 44.2 bases:

- Intervening circumstances of substantial effe-ct: heightened 2025 federal judicial emphasis on transcript integrity, record preservation, a--nd reliability of appellate records.
- Other substantial grounds not previously pre-sented: newly presented federal authorities (co--nstitutional-record cases and federal rulemak-ing statutes) that materially strengthen the federal question and were not previously brief-ed.

INTRODUCTION

The petition previously denied (or summarily dispose -d) presented a constitutional challenge arising from an incomplete or unreliable trial record that precluded meaningful appellate review. Since that disposition, the federal judiciary's 2025 initiatives have elevated transcript integrity and record reliability from a recurring administrative problem to a nationally recognized judicial priority. Under **Rule 44.2**, these intervening circumstances, coupled with newly presented federal authorities, warrant rehearing. Petitioner expressly does not rely on any proposed rule or administrative action as binding law. Instead, consistent with the **Rules Enabling Act**, proposed rules and administrative activities are offered for their persuasive force as national context bearing on the constitutional stakes of the federal question. See 28 U.S.C. § 2072; 28 U.S.C. § 2074; *Christensen; Skidmore; Azar; Sweet; Eustace.*

STATEMENT OF THE CASE AND INTERVENING CIRCUMSTANCES

1. Proceedings below. Petitioner challenges a final judgment issued 6/22/2023 after a critical evidentiary and dispositional hearing held in the trial court. At that hearing, the court took testimony, made credibility determinations, ruled on objections, resolved disputed factual issues, and compelled petitioner to proceed without counsel. The trial court announced its findings orally, and no written order captured the substance of those rulings beyond a brief disposition form. No verbatim transcript or audio recording of the hearing exists. The court did not employ a court repo -rter, electronic recording system, or any mechanism sufficient to create a reviewable record. The absence of a transcript was not attributable to petitioner, and no **FRAP-10(c)**-type reconstruction was undertaken or approved by the court.

Petitioner appealed to the intermediate appellate court, arguing that meaningful review was impossible because the dispositive proceedings were unrecorded. The appellate court affirmed solely on the basis of the *Applegate* presumption, holding that in the absence of a transcript it must presume the trial court acted correctly, even where the absence of the record was caused entirely by the State. Petitioner sought review in the state's highest court, which summarily declined jurisdiction on 4/22/2025, leaving in place the affirmance grounded entirely on a silent record. The petition for certiorari to this Court was denied.

Petitioner now seeks rehearing under Rule 44.2 based on (1) newly presented federal statutory and procedu -ral grounds relevant to the constitutional issue, and (2) intervening circumstances bearing on transcript integrity and appellate review that arose after the denial of certiorari. The petition for certiorari was denied on 11/24/2025.

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2. Record defect. The Record Defect Is Structural, Not Curable, and Cannot Be Attributed to Petitioner.

The record deficiency in this case is not a mere omission, nor the product of a failure by petitioner. It is a **structural absence** of the trial transcript and audio record—an absence created by the State itself—and therefore cannot be cured through the mechanisms contemplated in **FRAP 10(c)**. The defect is disp-- ositive because meaningful appellate review is impos -sible where the trial court proceedings cannot be re- -constructed with accuracy or reliability.

A. The Missing Transcript Materially Affects Review of Every Issue Presented

The trial court held a critical evidentiary and final-disposition hearing, during which:

- all substantive rulings were made,
- witness credibility determinations were conducted,
- objections were raised and ruled upon,
- legal standards were applied verbally,
- findings were announced orally, and

- petitioner was compelled to proceed without counsel.

None of this exists in any recordable form. There is **no transcript, no audio recording, no clerk's reco–rding, no court reporter notes**, and **no judicial reconstruction**. As a result:

- There is no basis to evaluate whether constitutional standards were met,
- The appellate court's application of the *Applegate* presumption cannot be tested, and
- the federal question— whether due proc ess permits affirmance in the absence of a transcript through no fault of the liti–gant cannot be resolved on the available record.

This is a **structural defect**, not a factual dispute.

B. Reconstruction Under FRAP 10(c) Was Impossible

The federal model **(FRAP 10(c))** recognizes that tra-nscripts may occasionally be unavailable and therefo -re requires the trial court to settle and approve a st--atement of evidence or proceedings, to ensure an adequate record for appellate review. Florida did not employ any analogous procedure.

Reconstruction was impossible because:

1. **The trial judge made no contemporan--eous notes that could substitute for a transcript.**
   The court provided no findings, no bench notes, and no recorded summary of rulings.
2. **The parties could not agree on a state-ment of proceedings.**

Petitioner contested several of the court's factual and legal conclusions which are pre cisely the matters that cannot be reconstru -cted without a verbatim record.

3. **Opposing counsel refused to participa -te in any meaningful reconstru-ction.** Without adversarial participation, no FRA-P-10(c)-type process can reliably occur.
4. **The trial court declined to reconstruct the record.** The judge offered no reconstruction, summ -ary, or approval of a proposed statement, making the federal analogue impossible to satisfy.
5. **Key events depended on tone, sequenc ing, objections, and credibility determ -inations.** These cannot be reconstructed reliably fro-m memory and are constitutionally signific -ant.

Thus, a FRAP 10(c) style reconstruction would not h-ave produced an "accurate, complete, or reliable" rec-ord as contemplated in federal practice.

C. 28 U.S.C. § 753 Shows That Congress Views Transcript Preservation as Essential

The Federal Court Reporting Act, 28 U.S.C. § 753(b), requires that federal "proceedings shall be recorded verbatim" and preserved for appellate review. Althou -gh the statute applies directly to federal courts, it ex presses a **Congressional judgment** that appellate review cannot function without an accurate transcri-pt. The Florida appellate process in this case deviated from the federal norm in the constitutionally relevant

respect: it affirmed a judgment **precisely because** t -he transcript was missing even though the omission was not attributable to petitioner. This position is in compatible with § 753's baseline requirement that re -viewable records must be preserved and cannot be a -ssumed into existence through presumption.

D. The State's Refusal or Failure to Preserve the Record Precluded Meaningful Appellate Revie-w

This Court's decisions in ***Griffin v. Illinois, Draper v. Washington, Mayer v. Chicago,*** and ***Hardy v. United States*** establish that:

1. A State may not condition appellate review on the litigant's ability to produce a trans–cript that the *State itself failed to create or preserve*;
2. due process prohibits affirming a judgment based on a presumption that unsupported trial-court findings were correct; and
3. When the State's own actions prevent the creation of a record, it must provide altern--ative mechanisms to permit review.

Here, the appellate court did the opposite: it invoked the *Applegate* presumption **because no transcript existed**, even though the absence was caused by the State. This is precisely the constitutional defect cond -emned in *Griffin, Draper, and Mayer*.

E. The Record Defect Is Therefore a Federal Structural Issue Under Rule 44.2 Because:

- no transcript exists,
- no audio recording exists,

- no judicial reconstruction exists,
- no FRAP-10(c)-type process occurred,
- significant evidentiary and constitutional rulings occurred off-record,
- credibility and factual determinations cannot be reviewed, and
- affirmance depended entirely on the record's absence,

The defect is structural and directly tied to the federal constitutional question presented. This record deficiency remains the central, unavoidable obstacle to meaningful appellate review and its constitutional significance is further illuminated by the newly presented federal statutory and procedural grounds.

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3. Intervening 2025 federal developments. Since the Court's disposition, the federal judiciary has placed renewed emphasis on the reliability of trial evidence, transcript integrity, and the accuracy of appellate records, as reflected in proposed rulemaking and administrative initiatives. Petitioner cites these developments solely for their persuasive, national significance context, not as controlling law, consistent with **§ 2072**, **§ 2074**, and the principle that sub regulatory measures lack binding effect absent proper rulemaking. See *Christensen; Skidmore; Azar; Sweet; Eustace*

REASONS FOR GRANTING REHEARING

I. Intervening national emphasis on transcript integrity materially elevates the constitutional stakes of the question presented. The 2025 federal focus on transcript integrity and record reliability demonstrates that the problem at the heart of this case is not idiosyncratic; it is a national judicial concern. That development bears directly on the constitutional gravity of the issue. Petitioner does not assert that proposals or administrative actions have the force of law. Under the **Rules Enabling Act**, rules have controlling effect only when duly promulgated and effective; until then, they are persuasive indicators of institutional judgment and urgency. See 28 U.S.C. § 20 -72; 28 U.S.C. § 2074. Courts appropriately treat su– ch materials as persuasive but nonbinding, according to weight to their reasoning rather than authority. See Christensen; *Skidmore; Azar;* see also *Sweet; Eustace.*

II. Newly presented federal authorities confirm that an incomplete or unreliable record denies meaningful appellate review and violates the Fourteenth Amendment. This Court's precedents establish that indigent defendants must receive a record adequate for effective review; transcript alternatives are permissible only if they provide an equivalent basis for adjudicating the asserted errors. See *Griffin; Draper; Mayer.* Where new counsel prosecutes an appeal, effective advocacy requires access to the full transcript. See Har -dy. Petitioner presents these authorities as newly

emphasized federal grounds under **Rule 44.2** of newly emphasized federal grounds under **Rule 44.2** because of the 2025 developments illuminate the constitutional implications of transcript failures that were not fully appreciated at the time of the prior petition.

III. Newly Presented Eleventh Circuit Transcript Doctrine Confirms That Due Process Forbids Presumptions When the State Causes the Record to Be Incomplete.

Petitioner has now identified controlling Eleventh Circuit authority—previously uncited—that further refutes the State's use of the Applegate presumption. The Eleventh Circuit has long held that a reviewing court may not apply a presumption of correctness against an appellant when the absence of a transcript is attributable to the State or to the court, rather than to the appellant. See, e.g.:

- *United States v. Selva*, 559 F.2d 1303, 1305–06 (5th Cir. 1977)
- (binding in the Eleventh Circuit by adoption) ("Where the appellant is not at fault for the missing portions of the record, reversal is required if the omissions prevent meaningful review.")
- *United States v. Brown*, 9 F.3d 907, 910 (11th Cir. 1993) (appellate courts may not affirm using presumptions when "the absence of a record defeats review of the constitutional claim").

- *United States v. Preciado-Cordobas*, 981 F.2d 1206, 1212 (11th Cir. 1993) ("When the failure to record proceedings is attributable to the cou -rt, the burden cannot be shifted to the defend-ant.")

These authorities establish a clear federal rule:

> When the State or the court causes the absence of a transcript, the appellate court must not presume the correctness of the judgment, because the absence of the record destroys the ability to conduct meaningful review. That is exactly the situation here. Petitioner did not cause the record defect. The State did. Yet the appellate court affirmed solely BECAUSE the record was missing. This Eleventh Circuit doctrine was nev-er presented in the original petition and therefore qualifies as a new substantial ground under Rule 4—4.2. It also reinforces that the state court's approach conflicts with bedrock due-process principles long rec-ognized in federal appellate practice.

IV. The petition employs proposed rules and adminis-trative developments correctly—as context and cor-roboration, not as "new law." Petitioner expressly does not contend that any proposed rule or adminis-trative action is controlling. That would be incon-sistent with the **Rules Enabling Act** and this Court's instruction that unpromulgated or sub regu-latory measures do not bind. See 28 U.S.C. § 2072; 28 U.S.C. § 2074; *Christensen; Skidmore; Azar; Sweet; more; Eustace.* Instead, Petitioner invokes them as persuasive evidence of a nationwide judicial

commitment to the accuracy and reliability of records—precisely the kind of intervening circumstance **Rule 44.2** contemplates.

V. Rehearing is appropriate to prevent a miscarriage of justice and to protect access-to-review interests within this Court's supervisory role. Post-judgment reconsideration is extraordinary and reserved for grave circumstances. The Court has recognized in related contexts that reopening is warranted to avoid a miscarriage of justice and to safeguard the integrity of adjudication. See *Calderon v. Thompson*. Likewise, this Court has exercised jurisdiction to ensure access to appellate review when threshold decisions risk foreclosing meritorious claims. See *Hohn v. United States*. Here, the combination of a defective record and national judicial emphasis on record reliability presents precisely the kind of substantial grounds that justify rehearing under **Rule 44.2**.

VI. The petition respects the general rule against raising new issues while properly presenting new grounds under Rule 44.2. Ordinarily, issues not passed upon below are not considered in later stages. See *Singleton v. Wulff*. Petitioner adheres to that principle by not changing the claim; the federal question remains whether the record's inadequacy deprived Petitioner of meaningful appellate review. The intervening 2025 developments and newly presented authorities do not create a new claim; they supply new federal grounds and heightened constitutional context for the same claim—precisely what **Rule 44.2** permits. Taken together, the Eleventh Circuit tr

-anscript doctrine confirms that presumptions cannot constitutionally operate where the record is silent because the State itself failed to create or preserve it. These authorities materially alter the posture of the case and reinforce the supervisory need for intervention: absent correction, state courts may continue to employ the Applegate presumption to shield judgments from review, creating a systemic loophole that contradicts federal due-process norms. These newly relevant authorities thus satisfy Rule 44.2's requirement of "intervening circumstances of a substantial or controlling effect" and "other substantial grounds not previously presented."

VII. Timeliness and finality are unimpaired; this filing complies with Rule 44.2 and acknowledges **Rule 16.3**. This petition is filed within the period required by **Rule 44.2** and does not affect the finality of the Court's order absent an express order to the contrary. See **Rule 16.3**; *Clay; Thomas; Robinson.*

THE "LOCKING" ARGUMENT

These developments collectively demonstrate that transcript integrity, record preservation, and meaningful appellate review are recognized national judicial priorities. That context materially alters the constitutional significance of the question presented and satisfies **Rule 44.2** by supplying intervening circumstances of substantial effect and other substantial grounds not previously presented.

RELIEF REQUESTED

Petitioner respectfully requests that the Court grant rehearing, vacate the [order/summary disposition], and:

- grant the petition for a writ of certiorari and set the case for briefing on the merits; or
- grant, vacate, and remand with instructions to ensure a record of sufficient completeness or an adequate equivalent consistent with *Griffin; D -raper; Mayer; and Hardy.*

Dated: December 15, 2025

Respectfully submitted,

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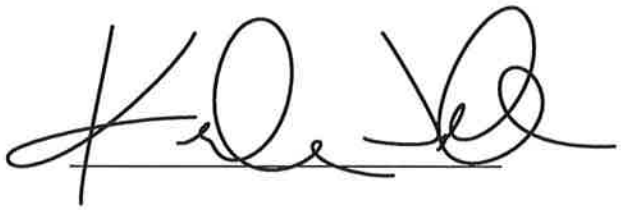
CERTIFICATE OF PETITIONER

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.



Appendix

28 U.S.C. § 753 (Court Reporters Act)

(a) Each district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands shall appoint one or more court reporters. The number of reporters shall be determined by the Judicial Conference of the United States. The qualifications of such reporters shall be determined by standards formulated by the Judicial Conference. Each reporter shall take an oath faithfully to perform the duties of his office. Each such court, with the approval of the Director of the Administrative Office of the United States Courts, may appoint additional reporters for temporary service not exceeding three months, when there is more reporting work in the district than can be performed promptly by the authorized number of reporters and the urgency is so great as to render it impracticable to obtain the approval of the Judicial Conference. If any such court and the Judicial Conference are of the opinion that it is in the public interest that the duties of reporter should be combined with those of any other employee of the court, the Judicial Conference may authorize such a combination and fix the salary for the performance of the duties combined.

(b) Each session of the court and every other proceeding designated by rule or order of the court or by one of the judges shall be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to regulations promulgated by the Judicial Conference and subject to the discretion and approval of the judge. The regulations promulgated pursuant to the preceding sentence shall

prescribe the types of electronic sound recording or other means which may be used. Proceedings to be recorded under this section include (1) all proceedings in criminal cases had in open court; (2) all proceedings in other cases had in open court unless the parties with the approval of the judge shall agree specifically to the contrary; and (3) such other proceedings as a judge of the court may direct or as may be required by rule or order of court as [1] may be requested by any party to the proceeding. The reporter or other individual designated to produce the record shall attach his official certificate to the original shorthand notes or other original records so taken and promptly file them with the clerk who shall preserve them in the public records of the court for not less than ten years. The reporter or other individual designated to produce the record shall transcribe and certify such parts of the record of proceedings as may be required by any rule or order of court, including all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases unless they have been recorded by electronic sound recording as provided in this subsection and the original records so taken have been certified by him and filed with the clerk as provided in this subsection. He shall also transcribe and certify such other parts of the record of proceedings as may be required by rule or order of court. Upon the request of any party to any proceeding which has been so recorded who has agreed to pay the fee therefor, or of a judge of the court, the reporter or other individual designated to produce the record shall promptly transcribe the original records of the requested parts of the proceedings and attach to the transcript his official certificate, and deliver the same to the party or

judge making the request. The reporter or other designated individual shall promptly deliver to the clerk for the records of the court a certified copy of any transcript so made. The transcript in any case certified by the reporter or other individual designated to produce the record shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcripts of the proceedings of the court shall be considered as official except those made from the records certified by the reporter or other individual designated to produce the record. The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge.

(c) The reporters shall be subject to the supervision of the appointing court and the Judicial Conference in the performance of their duties, including dealings with parties requesting transcripts.

(d) The Judicial Conference shall prescribe records which shall be maintained and reports which shall be filed by the reporters. Such records shall be inspected and audited in the same manner as the records and accounts of clerks of the district courts, and may include records showing:

(1) the quantity of transcripts prepared;
(2) the fees charged and the fees collected for transcripts;
(3) any expenses incurred by the reporters in connection with transcripts;
(4) the amount of time the reporters are in attendance upon the courts for the purpose of recording proceedings; and

(5) such other information as the Judicial Conference may require.

(e) Each reporter shall receive an annual salary to be fixed from time to time by the Judicial Conference of the United States. For the purposes of subchapter III of chapter 83 of title 5 and chapter 84 of such title, a reporter shall be considered a full-time employee during any pay period for which a reporter receives a salary at the annual salary rate fixed for a full-time reporter under the preceding sentence. All supplies shall be furnished by the reporter at his own expense.

Rule 10. The Record on Appeal

(a) Composition of the Record on Appeal. The following items constitute the record on appeal:

(1) the original papers and exhibits filed in the district court;
(2) the transcript of proceedings, if any; and
(3) a certified copy of the docket entries prepared by the district clerk.

(b) The Transcript of Proceedings.

(1) Appellant's Duty to Order. Within 14 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

(i) the order must be in writing;
(ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and
(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or
(B) file a certificate stating that no transcript will be ordered.

(2) Unsupported Finding or Conclusion. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the

record a transcript of all evidence relevant to that finding or conclusion.

(3) Partial Transcript. Unless the entire transcript is ordered:

(A) the appellant must—within the 14 days provided in Rule 10(b)(1)—file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;
(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 14 days after the service of the order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and
(C) Unless within 14 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 14 days either order the parts or move in the district court for an order requiring the appellant to do so.
(4) Payment. At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable. If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any

objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it—together with any additions that the district court may consider necessary to a full presentation of the issues on appeal—must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.

(e) Correction or Modification of the Record.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected, and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

Excerpt from Guide to Judiciary Policy, Vol. 6, Ch. 1, § 120 et seq.

Volume 6, Chapter 1: Federal Court Reporting Policy

§ 120 Authority

Under the Court Reporters Act (28 U.S.C. § 753), every court session...

§ 140 Verbatim Reporting

The reporter shall record verbatim by shorthand, mechanical means, electronic sound recording...

§ 230 Transcript Format and Certification

The original transcript shall be authenticated and certified by the reporter

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

11/24/2025

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.